

Universal Periodic Review

Joint Australian NGO Coalition

Information Booklet

Joint NGO Submission

Australia is due to be reviewed under the Universal Periodic Review on 27 January 2011. In July 2010, a coalition of non-government organisations (NGOs) from across Australia prepared a joint NGO submission to the Universal Periodic Review of Australia. The submission was prepared with substantial input and guidance from a high-level NGO Working Group and was endorsed, in whole or part, by 68 organisations.

This Information Booklet has been prepared to assist States, NHRIs and NGOs to participate in the Universal Periodic Review of Australia in order to improve the protection and promotion of human rights on the ground.

The Australian Context

While Australia is a democratic and stable country, fundamental human rights issues have been at the core of national political and social policy and debate in Australia in the last decade. Despite being a constitutional democracy that respects the rule of law, Australia continues to fail to comprehensively incorporate its international human rights obligations into domestic law. Indeed, Australia remains the only developed state in the world without comprehensive constitutional or legislative protection at a national level.

As a result, many of Australia's human rights obligations are not justiciable or enforceable in Australian courts or tribunals. Consequently, many groups in Australian society are unable to enjoy their human rights on an equal basis with others.

The information contained in this Booklet documents areas in which Australia is falling short of its international obligations. Information has been prepared relating to the following thematic areas:

1. Constitutional and legislative framework
2. Equality and non discrimination laws
3. Women's rights
4. People with disability
5. Children's rights
6. Sexual and gender identity
7. Aboriginal and Torres Strait Islander peoples
8. Refugees and asylum seekers
9. Culturally and linguistically diverse communities
10. Administration of justice
11. Housing and homelessness
12. Poverty
13. Mental health care
14. Counter-terrorism
15. Police
16. Prisoners and prison conditions
17. Extra-territorial obligations

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Fact Sheet 1

Constitutional and legislative framework

Incorporation of treaty obligations into domestic law

Suggested Question

How does Australia ensure compliance with its international human rights treaty obligations without comprehensive constitutional or legislative protection of human rights?

Background

There is no overarching and comprehensive protection of human rights in Australian law, such as a bill of rights enshrined in the Australian Constitution or by legislation. In 2009, an independent review commissioned by the Australian Government found that Australia's legal and institutional protection of human rights is inadequate, particularly for individuals and communities that are marginalised or disadvantaged.¹ Despite widespread public support for the introduction of a Human Rights Act,² the Australian Government has said it will not consider the issue of comprehensive legal rights protection until at least 2014.

While Australia's domestic law contains a number of pieces of legislation that protect certain human rights, particularly the right to non-discrimination, they provide only patchwork protection. Most rights contained in the *ICCPR* and *ICESCR* are not justiciable or enforceable in Australian courts or tribunals. Where some protection exists, such as the *Racial Discrimination Act 1975* which partly implements the Convention on the Elimination of Racial Discrimination, the protections are merely Acts of Parliament and can be overridden by subsequent law. Indeed, the Australian Government can, and has, enacted laws which

¹ A copy of the National Human Rights Consultation Committee's report on the protection and promotion of human rights in Australia is available at <http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report>.

² The national human rights consultation received over 28,000 public submissions in support of a Human Rights Act.

override or suspend aspects of existing rights protections, and which pose a significant challenge to its compliance with international human rights law.³

Proposed Recommendation

That Australia fully incorporate its international human rights obligations into domestic law (with the aim of eventual Constitutional entrenchment) by introducing a comprehensive, judicially enforceable Human Rights Act.

Role of the Australian Human Rights Commission

Suggested Question

What steps has Australia taken to address the need for an expansion in the function and powers of the Australian Human Rights Commission so that it meets the standards for proper performance under the Paris Principles?

Background

Although Australia does have an independent national human rights institution in accord with the Paris Principles, the authority of the Australian Human Rights Commission is limited to inquiry and complaints. The Commission cannot make enforceable determinations and there is no requirement that the Australian Government implement or even respond to its recommendations. There is also insufficient funding for the Commission to properly conduct its functions and activities.

Proposed Recommendation

That Australia ensure that the determinations and recommendations of the Australian Human Rights Commission are given greater weight and that the Commission is sufficiently funded to independently and effectively fulfil its mandate.

³ See UPR Fact Sheet 7 on Aboriginal and Torres Strait Islander peoples.

Implementation of recommendations of UN human rights mechanisms

Suggested Question

What institutional structures does Australia have in place to systematically implement and follow up on views and recommendations made by UN treaty bodies, special procedures and other UN human rights mechanisms?

Background

Australia lacks any institutional mechanism for the systematic domestic consideration and implementation of views and recommendations made by UN human rights mechanisms. Australia has a poor record of taking action in response to treaty body recommendations, which it does not recognise as legally authoritative, and has rejected the adverse findings and recommendations of the UN Human Rights Committee on a significant number of occasions.⁴

Proposed Recommendation

That Australia extend the mandate of the proposed Joint Parliamentary Committee on Human Rights to include the consideration, follow up and oversight of implementation of recommendations and views of UN human rights mechanisms.

⁴ The views of the Human Rights Committee and the Australian Government's response can be found at http://www.ag.gov.au/www/agd/agd.nsf/Page/Human_rights_and_anti-discriminationCommunications.

Equality and non-discrimination laws

Consolidation of equality laws

Suggested Question

Will the Australian Government's proposed consolidation of anti-discrimination laws enshrine the right to equality as contained in international human rights law?

Background

Australia has enacted a number of laws to prevent discrimination, including the *Racial Discrimination Act 1975* (Cth), *Disability Discrimination Act 1992* (Cth), *Sex Discrimination Act 1984* (Cth) and the *Age Discrimination Act 2004* (Cth). Together, these laws provide only piecemeal protection of the right to non-discrimination.

Specifically, Australia's anti-discrimination laws are deficient in that they:

- are reactive and complaints-based;
- fail to actively promote equality or address systemic discrimination;
- do not address all grounds of discrimination or intersectional discrimination;⁵ and
- are ineffective in areas that have been granted permanent exemptions.⁶

The UN Human Rights Committee noted in their 2009 Concluding Observations on Australia that it “remains concerned that the rights to equality and non-discrimination are not comprehensively protected in Australia in federal law” and recommends that Australia “adopt Federal legislation, covering all grounds and areas of discrimination to provide comprehensive protection to the rights to equality and non-

discrimination”.⁷ The Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination Against Women and the Committee on the Elimination of Racial Discrimination have similarly recommended that Australia strengthen its anti-discrimination laws.⁸

In April 2010, the Australian Government announced a commitment to “harmonise and consolidate Commonwealth antidiscrimination laws”. Australia should use this opportunity to ensure that its equality laws meet the anti-discrimination and equality obligations articulated in its international obligations.

Proposed Recommendation

That Australia enact comprehensive equality legislation that addresses all prohibited grounds of discrimination, promotes substantive equality and provides effective remedies against systemic and intersectional discrimination.

Constitutional guarantee of equality

Suggested Question

Does the Australian Government support a Constitutional amendment enshrining the right to equality?

Background

The Australian Constitution does not enshrine the right to equality and non-discrimination. As a result, anti-discrimination laws may be overridden by subsequent legislation, as is the case with the

⁵ Under domestic law, sex, race, age and disability are all protected attribute. This is a narrower set of grounds that under international human rights treaties and does not include, for example, protection against discrimination on the grounds of sexual orientation, gender identity, religion or social status.

⁶ For example, under the *Sex Discrimination Act 1984* (Cth), sporting clubs, religious bodies and charities are permanently exempt from the operation of the Act.

⁷ Human Rights Committee, *Concluding Observations: Australia*, CCPR/C/AUS/CO/5, 2 April 2009 [12].

⁸ Committee on Economic, Social and Cultural Rights, *Concluding Observations: Australia*, E/C.12/AUS/CO/4, 12 June 2009 [14]; Committee on the Elimination of Discrimination Against Women, *Concluding Observations: Australia*, CEDAW/C/AUS/CO/7, 30 July 2010 [25]; Committee on the Elimination of Racial Discrimination, *Concluding Observations: Australia*, CERD/C/AUS/CO/15-17, 27 August 2010 [10].

Northern Territory Intervention laws (see Fact Sheet 7 on Aboriginal and Torres Strait Islander peoples).

Proposed Recommendation

That Australia's proposed Equality Act include a provision mandating that an inquiry be held into a constitutional amendment aimed at enshrining the right to equality.

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Fact Sheet 3

Women's rights

Consolidation of equality laws

Suggested Question

How will the proposed consolidation of Australia's anti-discrimination laws ensure the adequate protection of CEDAW rights, substantive equality and effective remedies against systemic and intersectional discrimination?

Background

The *Sex Discrimination Act 1984* (SDA) does not adequately address systemic discrimination or promote substantive equality – there is no general prohibition on sex discrimination; the burden for addressing sex discrimination is on individual complainants; intersectional discrimination is not adequately addressed; and exemptions to the Act, such as those for religious institutions, perpetuate unfair and unreasonable discrimination against women. Protection from discrimination against women in the workforce remains inadequate, particularly in the areas of pregnancy and family responsibilities. Proposed changes to the SDA, which will improve protections against sexual harassment, and discrimination on the basis of breastfeeding and family responsibilities, are welcome but further improvements are needed, such as those recommended in the 2008 Senate Committee Inquiry into the SDA. The Australian Government has committed to consolidating and harmonising federal anti-discrimination law into a single Act and to considering the unimplemented Inquiry recommendations as part of this process, but it is not yet clear how this will happen.

Proposed Recommendation

That Australia's consolidation and harmonisation of anti-discrimination laws be based on broad consultation and undertaken in a manner that strengthens anti-discrimination laws, including by addressing all prohibited grounds of discrimination, promoting substantive equality, providing effective remedies against systemic and intersectional discrimination, and implementing the remaining recommendations of the 2008 Senate Committee inquiry into the *Sex Discrimination Act*.

Under-representation of women

Suggested Question

*Will Australia consider introducing quotas to address the significant under-representation of women at board and managerial levels; and implement and fund the recommendations of the pay equity report, *Making it Fair*, as a matter of priority?*

Background

Women remain significantly underrepresented on boards and at senior management level. In 2010, only 8.4% of directors of the largest 200 publicly listed companies in Australia and 33.4% of government boards are women. Australia has recently introduced a new gender diversity target of 40% representation for both women and men on Australian Government boards. However the target of 40% applies when looking at the *total* number of women and men across all Australian Government boards – it does not address representation on individual government boards and may therefore have little impact.

The gender pay gap continues to widen, with women earning 82 cents in the male dollar (the biggest gap since 1994), and the gap is as big as 35% in some industries. The gender pay gap affects current incomes, living standards and the capacity of women to save for retirement. The report of the 2008-09 Parliamentary Committee Inquiry into pay equity, *Making it Fair*, made a large number of recommendations to which the Government has not yet responded.

Proposed Recommendation

That Australia: (1) adopt targets of at least 30% representation of women on public and private sector boards, with a view to adopting compulsory quotas if targets are not met after three years; and (2) implement and fund the recommendations of the pay equity report, *Making it Fair*, as a matter of priority.

Needs of particular groups

Suggested Question

What strategies have been and will be put in place to ensure that the particular human rights issues that affect Aboriginal and Torres Strait Islander women, rural women, women with disability, women identifying as lesbian, bisexual, transgender, transsexual or intersex, and women from culturally and linguistically diverse backgrounds are addressed?

Background

High rates of violence against women remain a major issue, with almost one-in-three Australian women experiencing physical violence and almost one-in-five women experiencing sexual violence in their lifetime. The government-appointed National Council to Reduce Violence Against Women and Children delivered its report in April 2009. In August 2010, the Australian Government released a draft National Plan to Reduce Violence against Women and Children, but this has yet to be implemented fully.

Women from different population groups experience particular difficulties. There is limited access to family violence and sexual assault services in rural and remote areas. Women from culturally and linguistically diverse backgrounds face difficulties in reporting violence and accessing culturally appropriate accommodation. Violence against women with disabilities often goes undetected, unreported or uninvestigated, and there is a lack of access to appropriate services, including crisis accommodation, for women with disabilities. Violence against women identifying as lesbian, bisexual, transgender, transsexual or intersex within relationships often goes unacknowledged by national anti-violence strategies. Aboriginal and Torres Strait Islander women also experience high rates of violence (see further below).

Three major government-commissioned reports have found that the family law system does not respond effectively to issues of family violence. As part of its election platform, the Australian Labor Party committed to amending legislation responding to these reports but has not done so since being re-elected.

Proposed Recommendation

That Australia, as a matter of priority, implement and adequately fund a National Plan to Reduce Violence Against Women and Children, a mechanism for independent monitoring, and amend the family law system and legislation to better protect the safety of women and children.

Violence against women

Suggested Question

What steps has Australian taken to reduce violence against Aboriginal and Torres Strait Islander women and ensure that culturally appropriate and accessible services are available to such women?

Background

Aboriginal and Torres Strait Islander women experience horrific levels of violence and are 35 times more likely to be hospitalised as a result of spousal or partner violence than non-Indigenous women. Violence against Aboriginal and Torres Strait Islander women is associated with a number of factors, including racism, dispossession, disadvantage and poor living conditions. Australia provides funding to Aboriginal and Torres Strait Islander Legal Services, however Aboriginal and Torres Strait Islander women experience difficulties in accessing and gaining representation from these services. Australia has also funded family violence prevention legal services to provide services to Aboriginal and Torres Strait Islander people, however these services are not available in all parts of Australia, including urban areas, and are not adequately funded for law reform and policy development work.

Proposed Recommendation

That Australia fund culturally-appropriate Aboriginal and Torres Strait Islander women's legal services in urban, rural and remote areas of Australia and a peak body to ensure coordinated law reform and policy development.

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Fact Sheet 4

People with disability

Implementation of the UN Convention on the Rights of Persons with Disabilities

Suggested Question

How does Australia's law, policy and practice ensure that people with disability are able to realise their human rights on an equal basis with others?

Background

People with disability do not enjoy their fundamental human rights on an equal basis with others in Australia. Although the *Disability Discrimination Act 1992* (Cth) provides limited protection from discrimination and harassment for people with disability in areas of employment, education and the provision of goods and services, many people with disability are unable to assert their rights due to the lack of human rights in legislation. As a result, many people with disability remain significantly disadvantaged in Australian society in relation to key indicators of social and economic well-being.

Proposed Recommendation

That Australia incorporate the Convention on the Rights of Persons with Disabilities into its domestic law through legislation.

Non-therapeutic sterilisation

Suggested Question

What steps is Australia taking to respond to the Concluding Observations of both the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination Against Women in relation to non-therapeutic sterilisation of people with disability, particularly girls and women with disability?

Background

Non-therapeutic sterilisation of people with disability remains an ongoing practice in Australia and impacts most significantly on the rights of women and girls with disability. To some extent, State and Territory guardianship and child

protection laws regulate and provide a degree of protection from non-therapeutic sterilisation for all children and young people and adults with decision-making disability, but none makes non-therapeutic sterilisation explicitly unlawful. Comprehensive law reform is required to provide effective guarantees against such abuse.

From 2003 to 2007, Australia began to address non-therapeutic sterilisation of children by drafting nationally consistent legislation. However, this legislation aimed to regulate authorisation of non-therapeutic sterilisation rather than prohibit this form of abuse. The Australian Government discontinued this work because it believed that evidence indicated that sterilisation of children with intellectual disability had declined and that existing guardianship and court mechanisms for authorising sterilisation procedures were working adequately.

In 2005, the Committee on the Rights of the Child recommended in its Concluding Observations that Australia “prohibit sterilisation of children, with or without disabilities”.⁹ In 2010, the Committee for the Elimination of Discrimination Against Women recommended in its Concluding Observations that Australia “enact national legislation prohibiting, except where there is a serious threat to life or health, the use of sterilisation of girls, regardless of whether they have a disability, and of adult women with disabilities in the absence of their fully informed and free consent”¹⁰.

Proposed Recommendation

That Australia enact national legislation prohibiting the use of non-therapeutic sterilisation of children, regardless of whether they have a disability, and of adults with disability in the absence of their fully informed and free consent.

⁹ Committee on the Rights of the Child, Concluding Observations, Australia, September 2005, 46 e.

¹⁰ Committee on the Elimination of Discrimination Against Women, Concluding Observations, Australia, July 2010, 43.

Exercising the right to vote

Suggested Question

What steps will Australia take to immediately realise the right of people with disability to participate in the electoral process, including casting secret ballots freely and independently, on an equal basis with others?

Background

The ability of people with disability to vote independently and in secret in national, state and local government elections is still not a reality for many people with disability in Australia. This is despite the legal requirements to provide voting accessibility for people with disability under the *Disability Discrimination Act 1992 (Cth)* (DDA) and obligations under Article 29 of the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

Barriers to exercising a right to vote include:

- lack of accessible polling venues; lack of accessible information; and lack of access to the same postal voting arrangements as other citizens;
- lack of ballot papers in accessible formats, such as Braille, and in formats other than print means that many people with disability have to rely on another person to record their vote, and therefore are not able to cast a secret ballot;
- provisions in legislation that enable people to be excused from voting if they are of “unsound mind” – these provisions exclude many people on the grounds of their impairment rather than on their capacity to understand and make decisions. This is contrary to principles and concepts of “capacity” contained in Article 12 of the CRPD.
- receiving penalty notices for not voting when many people with disability may not understand voting information or may be unwell at the time of the election.

Proposed Recommendation

That Australia conduct a thorough, critical review of the legislative and administrative arrangements governing electoral matters to ensure that people with disability can fully and equally participate in electoral processes, including obtaining the right to cast a secret ballot freely and independently.

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Fact Sheet 5

Children's rights

National policy framework for children

Suggested Question

What framework do Australian governments use for developing policy around children in Australia?

Background

Despite Australia's ratification of the UN Convention on the Rights of the Child (CRC) in 1990, Australia does not have a comprehensive national policy framework for children. There has been a lack of integration of children's rights into Australian law, and no appropriate and effective mechanism exists to ensure the "coherence and compliance of all jurisdictions"¹¹ in Australia for the protection of children's rights.

In 2005, the UN Committee on the Rights of the Child noted that "there is no comprehensive policy at national level for children specifically addressing human rights issues that may impact on them,"¹² and also noted the need for more effective monitoring.¹³ Without a human rights framework for children, Australia fails to effectively set benchmarks or measure progress – particularly to improve the circumstances of Aboriginal and Torres Strait Islander children – and disadvantage and abuse is not consistently monitored or addressed. For example, Aboriginal and Torres Strait Islander children continue to experience high levels of abuse, neglect and exploitation.¹⁴ In many areas, Australia still lacks

¹¹ Committee On Economic, Social And Cultural Rights, Forty-Second Session, Geneva, 22 May 2009, Concluding Observations, Australia E/C.12/Aus/Co/4.

² CRC/C/15/Add.268, Concluding Observations, Australia, 40th Session, Paragraph 11.

¹³ CRC/C/15/Add.268, Concluding Observations, Australia, 40th Session, Paragraph 16.

¹⁴ Dr Lesley Chenoweth, *Children with Disabilities: What evidence do we have for better practice?*, September 2002,

http://www.acwa.asn.au/Conf2002/Conf_proceedings/04%20Lesley%20CHENOWETH.doc.

Many children, including those with disability, continue to experience severe disadvantage due to lack of supports and services.

the necessary data regarding the health and wellbeing of Aboriginal and Torres Strait Islander children. This lack of data inhibits progress to be made in overcoming disadvantage.¹⁵ Only with reliable data against internationally recognised measures, we can accurately direct resources to the areas of the greatest need and ensure that prevention and intervention strategies are implemented and effective.

Proposed Recommendation

That Australia (1) develop a comprehensive national policy framework for the protection and promotion of the rights of children; (2) appoint an independent national Child Commissioner;¹⁶ and (3) enact stronger legislative protections and enforcement for children.

Aboriginal and Torres Strait Islander children

Suggested Question

What progress has Australia made in addressing the disadvantage suffered by Aboriginal and Torres Strait Islander children that was noted by the UN Committee on the Rights of the Child in its Concluding Observations in October 2005?

Background

There have been some positive developments for Australia's Aboriginal and Torres Strait Islander peoples in recent years, including the Apology to the Stolen Generations, the endorsement of the UN Declaration on the Rights of Indigenous Peoples (DRIP) and the establishment of the National Congress of Australia's First Peoples. The commitment to "Close the Gap" in health

¹⁵ Australian Research Alliance for Children & Youth, 'The ARACY Report Card on the Wellbeing of Young Australians: Technical Report'(2008), p14.

¹⁶ The Position's mandate should include monitoring implementation of the CRC and CRPD and be in complement with an increase in supports and services, particularly to children with disability and Aboriginal children.

standards and life expectancy between Aboriginal and Torres Strait Islander peoples and other Australians by 2030 is also welcome. However, despite these developments, Aboriginal and Torres Strait Islander children continue to suffer significant disadvantage in the enjoyment of human rights.

The UN Committee on the Rights of the Child has called on Australia to “take all possible measures to raise the standard of living of Indigenous children and children living in rural and remote areas.”¹⁷ In March 2010, the UN Special Rapporteur on Indigenous Peoples¹⁸ (Special Rapporteur) reported the following areas of significant disadvantage faced by Aboriginal and Torres Strait Islander peoples:

- **Health and wellbeing:** The living conditions of many Aboriginal and Torres Strait Islander children increase the risk of lower standards of health and wellbeing¹⁹. There are still significantly higher infant mortality rates compared with the rest of the population. Efforts at improvement are further impeded by the lack of culturally appropriate health services available for Aboriginal and Torres Strait Islander peoples.
- **Education:** Adequate education is lacking and is hampered not only by the accessibility of services but also by the lack of training and provision of bilingual teachers and culturally adequate education programs in remote areas.
- **Abuse and violence:** Many Aboriginal and Torres Strait Islander children continue to experience high rates of abuse and violence and poor living conditions. The government has yet to adequately support culturally-appropriate child care and child protection strategies.

- **Over-representation in the criminal justice system:** Aboriginal and Torres Strait Islander children continue to be alarmingly over-represented in the justice system, being 28 times more likely to be incarcerated than non-Indigenous children. Access to justice is poor in remote areas and is contributed to by inadequate provision of culturally appropriate justice services.

Proposed Recommendation

That Australia review and implement each of the recommendations made by the UN Committee on the Rights of the Child and the Special Rapporteur in real partnership with Aboriginal and Torres Strait Islander peoples. Consultation must meet the standards contained in the Declaration on the Rights of Indigenous Peoples requiring genuine respect for cultural integrity and self determination.

¹⁷ CRC/C/15/Add.268, Concluding Observations, Australia, 40th Session, Paragraph 57.

¹⁸ James Anaya, UN Special Rapporteur Report: ‘The situation of Indigenous Peoples in Australia’ (4 March 2010).

¹⁹ The Australian Parliament Senate Committee on Regional and Remote Indigenous Communities found in its 2008 Report that children in Indigenous communities still too often lived in poverty, unhygienic conditions, poor quality housing and without access to appropriate food and water.

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Fact Sheet 6

Sexual and gender identity

A wide range of social research has found that Gay, Lesbian, Bisexual, Transgender and Intersex (GLBTI) Australians experience high levels of prejudice, stigma, exclusion, discrimination, abuse and hate-motivated assault. As a result, GLBTI Australians also experience higher-than-average levels of a range of mental and physical risk factors including suicide ideation, depression, and drug and alcohol abuse.

Discrimination laws

Suggested Question

How does Australia ensure that all citizens live free from discrimination regardless of their sexual orientation or gender identity?

Background

There is no Australian national law which comprehensively prohibits discrimination, harassment and vilification on the grounds of sexual orientation and gender identity. Some national laws governing workplace conditions provide some limited protection. The Australian Human Rights Commission can investigate and report on discrimination in employment but cannot enforce remedies if discrimination is proven.

Australian states and territories provide varying degrees of protection. However, these laws do not protect people employed by or receiving goods and services from the Federal Government. Also, most state and territory laws allow private clubs or religious organisations to discriminate.

Proposed Recommendation

Australia should implement a national law that prohibits discrimination, harassment and vilification on the grounds of sexual orientation and gender identity.

Parenting laws

Suggested Question

How does Australia ensure all its citizens have an equal right to family life regardless of sexual orientation?

Background

Most Australian states and territories fail to extend the equal rights, responsibilities and recognition to same-sex partners seeking to have, or currently raising, children. For example, the Northern Territory, Queensland, Victoria and South Australia do not allow same-sex partners to be assessed as potential adoptive parents. South Australia does not allow the same-sex partner of a woman who has given birth through artificial reproductive technologies to be presumed to be a co-parent. New South Wales, Tasmania, South Australia, Western Australia, the Northern Territory and the Federal Government do not recognise the surrogacy arrangements entered into by same-sex partners.

Proposed Recommendation

Australia should ensure that equal legal rights exist for same-sex partners seeking to become parents, or currently parenting.

Marriage equality

Suggested Question

How does Australia ensure equality before the law for all its citizens regardless of sexual orientation?

Background

Same-sex partners cannot marry in Australia. Same-sex marriages entered into overseas are not recognised as marriages in most Australian jurisdictions. Australian citizens seeking to enter into a same-sex marriage in another country are denied the documentation required by some foreign governments before they can marry (for example, a Certificate of Non-Impediment to marriage).

Proposed Recommendation

Australia should amend the Marriage Act to allow same-sex partners to marry and to recognise same-sex marriages from overseas.

Gender Identity**Suggested Question**

How does Australia ensure that all its citizens have equal legal rights and recognition regardless of gender identity?

Background

It is impossible for transgender people who have not undergone gender re-assignment surgery to have cardinal documents such as birth certificates or passports amended to reflect their gender identity. There are no laws prohibiting sex-assignment surgery on intersex children prior to them having the capacity to give consent.

Proposed Recommendation

Australia should ensure that all cardinal documents be amendable to accurately represent gender identity and choice of gender identity to be protected for all citizens.

Aboriginal and Torres Strait Islander peoples

Disproportionate levels of disadvantage

Suggested Question

What action has Australia taken to address the disproportionate levels at which Aboriginal and Torres Strait Islander peoples experience disadvantage?

Background

In all social indicators, Aboriginal and Torres Strait Islander peoples rate as among the most disadvantaged peoples in Australia. Aboriginal and Torres Strait Islander peoples rate far worse than non-Aboriginal and Torres Strait Islander peoples in education, employment, health, standard of living and incidence of family violence. They are also grossly over-represented in the child protection and criminal justice systems. The disparity is so great that the life expectancy of Aboriginal and Torres Strait Islander peoples is 12 years less for males and 10 years less for females than the corresponding rates for their non-Aboriginal and Torres Strait Islander counterparts. The Australian Government's response to the levels of disadvantage faced by Aboriginal and Torres Strait Islander peoples has been the "Closing the Gap" strategy. Due to lack of consultation with Aboriginal and Torres Strait Islander communities, ill-conceived program design and ineffective execution, the strategy has resulted in little change on the ground for Aboriginal and Torres Strait Islander peoples.

Proposed Recommendation

That Australia work with Aboriginal and Torres Strait Islander communities in the design of "Closing the Gap" initiatives so that solutions are locally driven and controlled, thus providing pathways for self-determination and a higher chance of sustainability of outcomes.

Northern Territory Emergency Response

Suggested Question

What action has Australia taken to address the discriminatory nature of the Northern Territory Emergency Response?

Background

The Northern Territory Emergency Response (NTER) was introduced to address reported child abuse in the Northern Territory (NT), yet actively discriminates against Aboriginal and Torres Strait Islander peoples and involves the suspension of the *Racial Discrimination Act 1975* (Cth). The NTER is comprised of a comprehensive suite of measures of extraordinary scope and gravity that impact upon almost every aspect of the lives of Aboriginal and Torres Strait Islander peoples in the NT. The measures range from those that impact upon Aboriginal and Torres Strait Islander peoples individually, including income quarantining, liquor restrictions and other discriminatory policies that bring Aboriginal and Torres Strait Islander peoples into contact with the criminal justice system, control of Aboriginal and Torres Strait Islander organisations, assets and land by government employees, and the undermining of land rights and the rights of traditional owners. The NTER violates the rights of Aboriginal and Torres Strait Islander peoples to be free from racial discrimination and does not allow collective self-determination, social security, freedom, dignity, individual autonomy in regards to family and other matters, privacy, land tenure and property, due process and cultural integrity. The NTER applies across whole Aboriginal communities despite individual behaviour and therefore racially vilifies and stigmatises Aboriginal and Torres Strait Islander peoples. Despite recent amendments to widen the application of compulsory welfare quarantining to non-Aboriginal and Torres Strait Islander communities in the NT, the NTER still disproportionately affects Aboriginal and Torres Strait Islander peoples due to the high population of Aboriginal peoples in the NT and high incidence

of welfare dependence. The discrimination evident in the NTER forms part of a wider framework of systemic racism against Aboriginal and Torres Strait Islander peoples.

Proposed Recommendation

That Australia (1) roll back the NTER in consultation with Aboriginal and Torres Strait Islander peoples; (2) initiate a process of constitutional reform to recognise and better protect the rights of Aboriginal and Torres Strait Islander peoples, including freedom from discrimination and equality before the law; (3) review all policies and legislation in order to identify and eliminate structural discrimination against Aboriginal and Torres Strait Islander peoples; and (4) grant Aboriginal and Torres Strait Islander Legal Services and other representative bodies the standing to commence legal proceedings on behalf of aggrieved Aboriginal and Torres Strait Islander peoples collectively.

Overrepresentation in the criminal justice system

Suggested Question

What action has Australia taken to address the over-representation of Aboriginal and Torres Strait Islander peoples within the criminal justice system?

Background

Aboriginal and Torres Strait Islander peoples in Australia are substantially over-represented in the criminal justice system. This is caused by an interplay of complex historical and contemporary factors including dispossession of land, structural disadvantage, systemic racism, intergenerational poverty and trauma, over-policing, substance misuse and mental illness, tough-on-crime policies and the chronic under-funding of Aboriginal and Torres Strait Islander legal and interpreter services.

Proposed Recommendation

That Australia (1) implement justice reinvestment strategies, increased therapeutic jurisprudence and restorative justice approaches; incorporate targets to reduce the high involvement of Aboriginal and Torres Strait Islander peoples in the criminal justice system into the “Closing the Gap” strategy; (2) increase the use of

non-custodial sentencing options; and (3) abolish mandatory sentencing laws and policies.

Conditions of incarceration

Suggested Question

What action has Australia taken to ensure adequate conditions for incarcerated Aboriginal and Torres Strait Islander peoples?

Background

Many Australian detention facilities, particularly in regional and remote areas, are dirty, overcrowded, lack air-conditioning, do not provide Aboriginal and Torres Strait Islander peoples in custody with access to culturally appropriate healing or rehabilitation programs, and place juveniles at risk of abuse by failing to always separate them from adults whilst in custody. Many detained persons receive inadequate medical and mental health care, which contributes to the ongoing incidence of deaths in custody. Prisoner transportation is also concerning because of the geographical expanse of Australia and remoteness of many Aboriginal and Torres Strait Islander communities. Detained persons are transported over hundreds of kilometres, amidst high temperatures, in vehicles that are not appropriately air-conditioned or monitored. Of all states and territories, only Western Australia has an Inspector of Custodial Services to provide an independent, expert and fair inspection service that gives up-to-date reports and advice about custodial facilities and services.

Proposed Recommendation

That Australia (1) ensure adequate medical care and living conditions are guaranteed for all people in detention, including during their transportation; (2) reform death in custody investigations so they are carried out by an independent body; (3) introduce legislation that requires governments to act on Coronial recommendations; and (4) ratify and implement the Optional Protocol to the UN Convention against Torture to ensure effective, independent monitoring and oversight of places of detention.

Access to justice

Suggested Question

What action has Australia taken to ensure adequate access to justice for Aboriginal and Torres Strait Islander peoples?

Background

Aboriginal and Torres Strait Islander Legal Services (ATSILS) are the preferred and sometimes only legal aid option for many Aboriginal and Torres Strait Islander peoples, many of whom experience language and cultural barriers, low levels of numeracy and literacy and distrust of the justice system. Despite Aboriginal and Torres Strait Islander incarceration rates increasing at an alarming rate over the past decade and the subsequent increase in demand for the ATSILS services, the amount of real funding provided has been declining.

Aboriginal and Torres Strait Islander women and children remain chronically disadvantaged in terms of their access to justice, especially in regards to situations of family violence. Family Violence Prevention Legal Services (FVPLS) are legal aid providers specialising in family violence mainly in regional and remote areas because of a lack funding to service urban areas where large proportions of Aboriginal and Torres Strait Islander peoples reside. The high incidence of family violence against Aboriginal and Torres Strait Islander women combined means that often the FVPLS are the only culturally appropriate legal assistance option available to Aboriginal and Torres Strait Islander women.

Proposed Recommendation

That Australia (1) ensure that the funding of the ATSILS and FVPLS is proportionally increased to equal that of mainstream legal aid services, for longer funding periods and for a broader range of areas including representation of Aboriginal and Torres Strait Islander peoples at coronial inquests and human rights law; (2) implement initiatives, in consultation with Aboriginal and Torres Strait Islander communities, to reduce the high incidence of family violence; and (3) provide adequate resources for the establishment and ongoing delivery of a national Aboriginal and Torres Strait Islander interpreter service.

Stolen Generations and Stolen Wages

Suggested Question

What action has Australia taken to provide compensation to victims of the Stolen Generations and Stolen Wages?

Background

The forced removal of Aboriginal and Torres Strait Islander children from their families was official government policy from 1909 to 1969. Once in care, high proportions were psychologically, physically and sexually abused. Consequently, substance abuse, depression, anxiety, post traumatic stress and suicide are commonplace. The impact of this trauma has also passed on to successive generations with members of the Stolen Generations having few past role models of parenting to draw on which can often result in a tragic cycle whereby their children are also removed by child protection agencies.

From 1900 to the 1980s, many Australian State and Territory governments withheld wages and other payments from Aboriginal and Torres Strait Islander peoples under their care and protection. This has had economic, social, cultural, civil, political and historical implications for Aboriginal and Torres Strait Islander peoples and is directly related to the disadvantage and poverty experienced today.

The Federal Government has refused to compensate the Stolen Generations and their families and has failed to establish a national scheme for the repayment of Stolen Wages.

Proposed Recommendation

That Australia immediately implement a national compensation scheme for members of the Stolen Generations and, where they are deceased, their descendants, and a national scheme for the return of all Stolen Wages to living victims and, where they are deceased, their descendants.

Child abuse, neglect and poverty

Suggested Question

What action has Australia taken to reduce the high incidence of child abuse, neglect and poverty amongst Aboriginal and Torres Strait Islander children?

Background

Aboriginal and Torres Strait Islander children are more than five times more likely to be the subject of child protection substantiations than non-Aboriginal and Torres Strait Islander children, which often leads to juvenile and adult involvement in the criminal justice system. It is widely accepted that there is a close link between child abuse and neglect and the broader issues of poverty, in all indicators of which Aboriginal and Torres Strait Islander peoples rate as the most disadvantaged peoples in Australia.

Proposed Recommendation

That Australia (1) implement a holistic approach to child protection incorporating a public health and prevention model to reduce the over-representation of Aboriginal and Torres Strait Islander children in the system and address the underlying causes of child abuse and neglect; and (2) adhere to the Indigenous Child Placement Principles at all levels of government and provide clarification of the definitions for compliance.

Declaration on the Rights of Indigenous Peoples

Suggested Question

How does Australia provide for the human rights contained within the Declaration on the Rights of Indigenous Peoples?

Background

Aboriginal and Torres Strait Islander peoples have and continue to suffer:

- systemic discrimination at all levels;
- land dispossession with little chance of achieving effective redress;
- less access to housing, education, employment and health care; and
- limited opportunities for self-determination, participation in decision-making in matters directly affecting their communities, and maintenance of their distinct political, legal, economic, social and cultural institutions.

Proposed Recommendation

That Australia adopt the Declaration on the Rights of Indigenous Peoples as the framework for engagement with Aboriginal and Torres Strait Islander peoples, and commit to obtaining the free, prior and informed consent of Aboriginal and Torres Strait Islander peoples in the development of policy that directly affects them.

Native title land

Suggested Question

What action has Australia taken to address the discriminatory aspects of the Native Title system to ensure recognition, protection and enjoyment of the rights of Aboriginal and Torres Strait Islander Peoples to access and control traditional lands and take part in cultural life?

Background

The strict requirement of the *Native Title Act 1993* of continuous connection with the land since colonisation is incompatible with the UN Declaration on the Rights of Indigenous Peoples, whilst other discriminatory aspects of the native title system remain in place. For example, reforms to the *Native Title Act* create legal certainty for governments and third parties at the expense of native title, but fail to deliver compensation for the wrongful extinguishment of native title to Aboriginal and Torres Strait Islander peoples. Australian law does not recognise traditional owner groups who have revitalised their traditions in recent years as native title holders, and Australian laws regularly presume a distinction between “Aboriginal cultural heritage” and the rights to take natural resources. Traditional owners understand “culture” to encompass much more than what is found in current legal definitions, and there is an essential link between the exercise of Aboriginal and Torres Strait Islander culture and self-determination.

Proposed Recommendation

That Australia reform the onerous standards and burdens of recognition for native title which deny Aboriginal and Torres Strait Islander peoples the right to access and control their traditional lands and take part in cultural life; and ensure that all forms of cultural heritage be protected in effective Australian laws.

Refugees and asylum seekers

Mandatory immigration detention

Suggested Question

What concrete legislative and other measures is Australia taking to ensure that immigration detention is only used as a measure of last resort and for the shortest period strictly necessary?

Background

The *Migration Act 1958* requires all unlawful non-citizens (other than those in excised offshore zones) to be detained, regardless of circumstances, until they are granted a visa or removed from Australia. Australian law also fails to protect unlawful non-citizens against indefinite detention, as time limitations for immigration detention are not codified in Australian law.²⁰

Conditions in immigration detention facilities have serious implications for the human rights of asylum seekers. Detention, particularly when indefinite or prolonged, has a detrimental impact on the mental health of persons who have suffered torture and trauma. This impact is magnified by the limited access to legal counsel, interpreting services, communication facilities, physical and mental health services and social, cultural and religious support networks available to asylum seekers in detention. This is particularly the case for asylum seekers detained in offshore or remote facilities, whose isolation renders the delivery of appropriate services difficult. In light of this, the re-opening of Curtin detention facility, in one of Australia's most remote locations, is of great concern.²¹

²⁰ *Migration Act 1958* (Cth), ss189(1), 189(2) and 196(1).

²¹ For further information on immigration detention in Australia, see Refugee Council of Australia (2008), *Submission to the Joint Standing Committee on Migration Inquiry into Immigration Detention in Australia*, available at <http://www.refugeecouncil.org.au/resources/submissions.html> (accessed 21 October 2010).

Proposed Recommendation

That Australia take immediate steps to (1) repeal the provisions of the *Migration Act 1958* relating to mandatory detention; (2) ensure that asylum seekers are detained only where strictly necessary and as a last resort; (3) codify in law time limitations for detention to ensure no detention beyond 6 months; (4) close the Curtin detention facility; and (5) implement community-based alternatives to detention, particularly for families, children and other vulnerable groups.

Offshore processing

Suggested Question

What steps is Australia taking to repeal the provisions of the Migration Act 1958 relating to excised offshore places, and to ensuring that all irregular migrants have equal access to and protection under Australian law for fair and judicially reviewable determinations of their migration applications?

Background

Under the *Migration Act 1958*, a non-citizen who first enters Australia at an excised offshore place (including Christmas Island, Ashmore and Cartier Islands and the Cocos Islands) without legal authorisation is unable to submit a valid visa application unless the Minister for Immigration makes a personal intervention into the case. This process of ministerial intervention is non-compellable and non-reviewable. In addition, asylum seekers in offshore places are barred from the refugee status determination system that applies on the Australian mainland, instead undergoing a non-statutory process governed by guidelines which are not legally binding. They have no access to the Refugee Review Tribunal (a non-transparent review process is available) and very limited access to the Australian courts.²²

²² For more information on offshore processing, see Australian Human Rights Commission (2009), *Immigration detention and offshore processing on*

The Australian Government recently announced it is considering further offshore processing of asylum seekers in Timor Leste. Without further detail or clarification of this policy, it is unclear whether this policy will enhance protection capabilities in the region or be merely a deflection of Australia's protection obligations.

Proposed Recommendation

That Australia take all necessary steps to ensure: (1) the provisions of the *Migration Act 1958* relating to excised offshore places are repealed; (2) all irregular migrants have equal access to and protection under Australian law for fair and judicially reviewable determinations of their migration applications, including applications for refugee status determination and protection; and (3) clarify its policy on offshore processing in Timor Leste, including setting out a framework for processing protection applications, options for appeal which will be provided to ensure that every asylum seeker receives a fair hearing, the accommodation arrangements and the resettlement options available for people found to be in need of protection.

Children in immigration detention

Suggested Question

What legislative measures is Australia taking to ensure that children are no longer detained in immigration detention?

Background

While the *Migration Act 1958* has been amended to affirm the principle that asylum seeker children should only be detained as a measure of last resort, and children are no longer detained in immigration detention centres, they nonetheless continue to be held in detention-like conditions in other immigration detention facilities.

Human rights issues relating to the detention of humanitarian minors have been examined in the Australian Human Rights Commission report, *A Last Resort? National Inquiry into Children in Immigration Detention*, however the Australian

Government has not implemented the recommendations outlined in this report.²³

Proposed Recommendation

That Australia: (1) take all necessary legislative steps to ensure no children are held in detention, or detention-like facilities; and (2) implement the outstanding recommendations from the Australian Human Rights Commission's National Inquiry into Children in Immigration Detention.

Health requirements exemption

Suggested Question

What steps is Australia taking to exempt health requirements from applications under the offshore component of Australia's Refugee and Humanitarian Program?

Background

Migrants to Australia must meet health requirements in order to be considered eligible for a visa. Some groups, including applications for onshore protection visas, are exempt from these health requirements. However, all offshore refugee and humanitarian applicants remain subject to health requirements. There are no justifiable grounds for the current differential treatment.

Proposed Recommendation

That Australia ensure that applications under the offshore component of Australia's refugee and humanitarian program are exempt from the operation of the health requirements.

Christmas Island, at http://www.humanrights.gov.au/human_rights/immigration/idc2009_xmas_island.html.

²³ Australian Human Rights Commission (2004), *A last resort? National Inquiry into Children in Immigration Detention*, at http://www.humanrights.gov.au/human_rights/children_detention_report/index.html.

Culturally and linguistically diverse communities

Multicultural policy

Suggested Question

Why has Australia, a country in which nearly half of all people were born overseas or have a parent who was born overseas, not had a multicultural policy since 2006? What steps is Australia taking to implement a multicultural policy?

Background

Australia's cultural diversity demands a contemporary multicultural policy to manage its diversity. Australia's last multicultural policy, *Multicultural Australia United in Diversity* (2003 – 2006), expired in 2006. A new multicultural advisory body (the Australian Multicultural Advisory Council) was established by the Australian Government in late 2008. While the Council has produced valuable recommendations in relation to the needs of multicultural Australia through its *People of Australia* (2010) publication, a new multicultural policy has yet to be implemented.

Most unfortunately, it seems that the language of multiculturalism has been “phased-out” in Australia. After the 2010 Federal Election, the title of the “Parliamentary Secretary for Multicultural Affairs and Settlement Services” was changed to the “Parliamentary Secretary for Immigration and Citizenship”.

A strong and comprehensive multicultural policy, actively promoted by the Australian Government, is needed to ensure Australia's economic and social prosperity.²⁴

Proposed Recommendation

That Australia develop and implement a comprehensive multicultural policy that affirms Australia's commitment to multiculturalism and addresses issues of access and equity in the delivery of services and information by Government to culturally and linguistically diverse communities. The multicultural policy should be informed by the Australian Multicultural Advisory Council's *People of Australia* publication and be developed in consultation with the multicultural sector.

Race Discrimination Commissioner

Suggested Question

Why does Australia only have a part-time Race Discrimination Commissioner, rather than a full-time Commissioner?

Background

The Australian Human Rights Commission is Australia's National Human Rights Institution (NHRI). Since 1999, the Commission has been without a full-time Race Discrimination Commissioner. Accordingly, Australia fails in its obligation to support the proper performance of an NHRI under the Paris Principles.

The part-time status of the Race Discrimination Commissioner is unacceptable, given the prevalence of race discrimination in Australia. One in 4 people have experienced discrimination based on race, ethnic or national background.²⁵

²⁴ The Federation of Ethnic Communities' Councils of Australia (FECCA) has prepared a detailed response to the AMAC statement/recommendations for a multicultural policy, available at www.fecca.org.au.

²⁵ The Australian Multicultural Advisory Council, *The People of Australia*, 2010, available at <http://www.immi.gov.au/about/stakeholder-engagement/national/advisory/amac/> (accessed 21 October 2010).

The Australian Government has recently highlighted the possibility of ensuring “that other areas of systemic discrimination, such as disability and race, have their own dedicated advocate”.²⁶ The Australian Government is strongly encouraged to pursue this agenda and to extend the role of Race Discrimination Commissioner to full-time, without delay. Further funding to the Australian Human Rights Commission is key to ensuring this objective is met.

Proposed Recommendation

That Australia (1) immediately appoint a full-time Commissioner exclusively dedicated to Race Discrimination and (2) provide the Australian Human Rights Commission with all necessary funding and human resources to support the role of a full-time Race Discrimination Commissioner.

Exemption of the Disability Discrimination Act from the Migration Act

Suggested Question

Why is the Migration Act 1958 (Cth) exempt from the Disability Discrimination Act 1992 (Cth)?

Background

Australia’s migration laws permit discrimination on the basis of disability by providing that strict health criteria must be met if one is to be granted a visa. The *Migration Act 1958* is currently exempt from the *Disability Discrimination Act 1992*. As a result of this exemption, the migration health assessment repeatedly fails to make a distinction between disability and health. Consequently the health assessment process is discriminatory towards immigrants with disability.

It is not uncommon for families to immigrate without declaring a family member with a disability (leaving them behind, as they believe a family member with disability will compromise their application for a visa) and applying for this member to immigrate to Australia after they arrive. This process is often protracted and extremely traumatic for the family and for the individual left behind.

Families are also being denied permanent residence due to medical assessments of individual family members with disability, including blindness, hearing impairment and autism.

Proposed Recommendation

That Australia take all necessary legislative measures to ensure that the *Migration Act 1958* is no longer exempt from the *Disability Discrimination Act 1992*.

²⁶ Australian Labor Party, *A Secure and Fair Australia*, 2010, available at www.alp.org.au/agenda/more---policies/a-secure-and-fair-australia/.

Universal Periodic Review of Australia – Joint NGO Coalition

Fact Sheet 10

Administration of justice

Funding of legal aid commissions and community legal services

Suggested Question

What steps is Australia taking, in cooperation with legal aid commissions, community legal services and specialist legal services for Aboriginal and Torres Strait Islander peoples, to determine and provide the minimum level of funding necessary to meet legal need?

Background

Funding for legal aid commissions, community legal services and specialist legal services for Aboriginal and Torres Strait Islander peoples is inadequate. In May 2010, the Australian Government announced an increase in funding to specialist community legal services, including Aboriginal and Torres Strait Islander legal services (ATSILS). While this has been welcomed by the sector, there are concerns that the increase does not go far enough to address the systemic crisis in the resourcing of, and access to, specialist services.

Of particular concern:

- between 1997 and 2007, there was an 18% reduction in real funding to community legal centres, who are the 205 not-for-profit community-based organisations that provide free legal advice and services to disadvantaged members of the Australian community and those with special needs;
- a 2009 Australian Senate Inquiry found that there are areas of law not sufficiently funded for the provision of essential legal aid, namely family law and civil law services;
- despite Aboriginal and Torres Strait Islander incarceration rates increasing at an alarming rate over the past decade and the subsequent increase in demand for the ATSILS services, the amount of real funding provided has been declining, compared to mainstream legal aid service providers and departments of public prosecutions; and

- Family Violence Prevention Legal Services (FVPLS) (legal aid providers specialising in family violence, often existing in regional and remote areas) are not always funded to service urban areas where large proportions of Aboriginal and Torres Strait Islander peoples reside. The high incidence of family violence against Aboriginal and Torres Strait Islander women, means that often the FVPLS are the only culturally appropriate legal assistance option available to Aboriginal and Torres Strait Islander women.

Proposed Recommendation

That Australia take immediate steps to (1) work with community legal service providers, including Aboriginal and Torres Strait Islander Legal Services, to determine and meet the minimum level of funding necessary to meet legal need; and (2) ensure the funding of the Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services is proportionally increased to equal that of mainstream legal aid services and departments of public prosecutions.

Interpreter services for Aboriginal and Torres Strait Islander peoples

Suggested Question

What steps is Australia taking to implement a national Aboriginal and Torres Strait Islander interpretive service?

Background

Despite the right to an interpreter in criminal proceedings and in some civil proceedings being enshrined in numerous international human rights instruments to which Australia is a party, Aboriginal and Torres Strait Islander peoples continue to be denied adequate access to interpreter services. This means that Aboriginal and Torres Strait Islander peoples can have great difficulty communicating with police, giving evidence, consulting with and giving instructions to their lawyer, and understanding court

proceedings. As a result, Aboriginal and Torres Strait Islander peoples are often denied a fair trial.

Proposed Recommendation

That Australia provide adequate resources for the establishment and ongoing delivery of a national Aboriginal and Torres Strait Islander interpretive service.

Over-representation of young people and Aboriginal and Torres Strait Islander peoples

Suggested Question

What concrete measures is Australia taking to ensure that the criminal justice system does not have a disproportionately harsh effect on vulnerable groups such as young people and Aboriginal and Torres Strait Islander peoples, particularly in states with mandatory sentencing laws?

Background

Mandatory sentencing laws, which require that offenders receive automatic terms of imprisonment for minimum prescribed periods for particular offences, continue to operate in Western Australia and the Northern Territory. This means that people who might have not otherwise been sentenced to a term of imprisonment are being incarcerated, with all the attendant destructive impacts (exposure to

violence and abuse, dislocation from pro-social supports such as family and employment). Mandatory sentences are not reviewable by Australian courts.

Mandatory sentencing laws have a disproportionate impact on Aboriginal and Torres Strait Islander peoples and young people. In the Northern Territory, incarceration rates of Aboriginal and Torres Strait Islander peoples is 3.5 times the national rate of imprisonment, and Aboriginal and Torres Strait Islander peoples constitute 83% of the prison population in the Northern Territory. In Western Australia, expansion of mandatory sentencing laws has seen the number of Aboriginal and Torres Strait Islander people in prison double since 2002. Aboriginal and Torres Strait Islander juveniles are 28 times as likely to be detained as other Australian juveniles, and Aboriginal women prisoners are the fastest growing demographic amongst the prison population, with an increase in incarceration rates of 420% in the decade to 2005.

Proposed Recommendation

That Australia, through its inter-governmental mechanisms, take concrete steps to repeal legislation that provides for mandatory sentencing.

Housing and homelessness

Right to adequate housing

Suggested Question

How does Australia give comprehensive legislative and practical effect to the right to adequate housing?

Background

Australia does not have national legislation that protects the right to adequate housing. In December 2008, the Australian Government released its White Paper on Homelessness, *The Road Home: A National Approach to Reducing Homelessness*, which recommended the enactment of national legislation to ensure that people who are homeless or at risk of homelessness receive quality services, adequate support to meet their needs and are treated with dignity and respect. Further, in 2009, a bi-partisan Parliamentary Committee recommended the enactment of a national Homelessness Act which enshrines the right to adequate housing.

Despite this, Australia has to date failed to specifically recognise the right to adequate housing in domestic law. The lack of a comprehensive legal framework to respond to homelessness prevents the progressive realisation of the right to adequate housing in Australia.

Proposed Recommendation

That Australia enact national legislation which:

- contains a clear definition of adequate housing and explicitly recognises a justiciable right to adequate housing;
- recognises Australia's international human rights obligations in relation to adequate housing; and
- establishes core minimum standards for homelessness services and the availability, accessibility, acceptability and quality of housing.

Recommendations of UN Special Rapporteur

Suggested Question

In 2007 the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Miloon Kothari, reported "a serious national housing crisis in Australia" and concluded that "Australia has failed to implement the human right to adequate housing".²⁷ What are the causes of this situation?

Background

On Census night in 2006, the Australian Bureau of Statistics calculated that 105,000 Australians were homeless.²⁸ The causes of homelessness in Australia are multiple and interrelated and include an acute shortage of affordable housing, unemployment, poverty, discrimination, structural inequalities and family violence, as well as individual hardships such as physical and mental health issues, contact with the criminal justice system and experiences with state care and child protection systems.

The shortage of housing is a key cause of homelessness in Australia. There are 173,000 households on waiting lists for public housing in Australia²⁹ and the wait can be up to 15 years. In 2009, there was a deficit of 493,000 affordable dwellings for people with the lowest incomes.³⁰

²⁷ Miloon Kothari, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, Mission to Australia* (11 May 2007) A/HRC/4/18/Add.2 p 3.

²⁸ See Chris Chamberlain and David MacKenzie, Australian Bureau of Statistics, *Australian Census Analytic Program: Counting the Homeless* (2006) available at www.abs.gov.au.

²⁹ Productivity Commission, *Report on Government Services 2010* (2010) available at <http://www.pc.gov.au/gsp/reports/rogs/2010>.

³⁰ National Housing Supply Council, Australian Government, *National Housing Supply Council – 2nd State of Supply Report* (2010) p 103.

Recent Government initiatives have made significant investments in social and affordable housing, but this does not offset the decline in stock over preceding decades. The fact that the number of homeless Australians continues to rise indicates that Australia has failed to implement the right to adequate housing.

Proposed Recommendation

That Australia (1) commit sustained funding for public and community housing which is considerate of the population increase expected in Australia over the next two decades; (2) provide a greater range of emergency, transitional and public and community housing and relevant support services which recognise the needs of particular groups who are disproportionately affected by homelessness (including Aboriginal and Torres Strait Islander peoples, people in rural and remote areas, people suffering mental illness, victims of domestic violence, asylum-seekers, immigrants and people released from detention); and (3) reconsider the current home ownership model (including tax incentives such as negative gearing and capital gains tax) in regards to its contribution to diminished availability and affordability of housing.

A human rights framework for homelessness

Suggested Question

Does Australia recognise homelessness as a human rights issue?

Background

Australia has not acknowledged Australia's homeless situation as a human rights issue. It does not recognise that 105,000 homeless Australians represent a failure to protect the human right to adequate housing; or that these Australians also face other human rights breaches, including of their rights to privacy, health, education, public participation, liberty, security, freedom from inhuman and degrading treatment, access to justice, exercise of civil and political rights and freedom from discrimination.

The failure to address homelessness within a human rights framework, and to acknowledge the interconnectedness of the right to adequate housing with other human rights, means that there are significant gaps in the Government's response to the housing crisis.

Proposed Recommendation

That Australia: (1) recognise Australia's obligations to progressively implement the right to adequate housing in legislation and policy; (2) review residential tenancy laws in order to ensure compliance with international human rights standards, particularly with respect to guaranteeing minimum acceptable accommodation standards and providing protection against eviction and unfair rent increases; and (3) develop minimal acceptable accommodation standards based on the definition of adequate housing in international law, which includes: security of tenure; availability of services; affordability; habitability; accessibility; proximity and cultural appropriateness.³¹

³¹ Committee on Economic, Social and Cultural Rights, *General Comment 4: The Right to Adequate Housing* E/1992/23 (1991).

Poverty

Unacceptably high levels of poverty

Suggested Question

Given that Australia is a prosperous country, why does 12 percent of the population still live in poverty?

Background

In 2008, 12 per cent of Australians were found to be living in poverty, which is a higher proportion than the OECD average.³² The risk of poverty for Australian sole parents is extremely high, at 70 percent.³³ Older Australians are also particularly affected by poverty. For single people aged over 65, the income poverty rate is 50 percent – the highest of all the countries in the OECD.³⁴

Australia's Social Inclusion Agenda aims to address social exclusion and reduce disadvantage. However, social security benefits are currently pegged at rates that leave people living in poverty and the needs of many people on extremely low incomes are not being met. Further, Australia is not using a human rights framework to underpin its Social Inclusion Agenda.

In 2009, the Committee on Economic, Social and Cultural Rights recommended that Australia take all necessary measures to combat poverty and social exclusion and develop a comprehensive poverty reduction and social inclusion strategy.

Proposed Recommendation

That Australia develop and implement a comprehensive national poverty reduction strategy, which recognises the need for an

adequate level of social security and adjusts Centrelink (the Commonwealth statutory authority responsible for delivering social security payments) levels accordingly.

Compulsory income management

Suggested Question

On what basis does Australia continue the compulsory quarantining of welfare payments for all “vulnerable” persons, including particularly Aboriginal and Torres Strait Islander peoples in the Northern Territory?

Background

In 2010, the Australian Government passed legislation expanding the operation of compulsory income quarantining to apply to all “vulnerable” welfare payment recipients across the Northern Territory. Previously, the income management had only applied to Aboriginal communities as part of the Northern Territory Emergency Response (see fact sheet on Aboriginal and Torres Strait Islander peoples). The measure is punitive in nature and its operation is not based on reliable or credible evidence to support its effectiveness.

In 2009, the Committee on Economic, Social and Cultural Rights expressed concern that such conditionalities for the payment of welfare benefits have a negative impact on disadvantaged and marginalised individuals and groups and strongly recommended that abolition of the quarantining of welfare payments under the Northern Territory Emergency Response. Despite this recommendation by CESCR, Australia has expanded the operation of the scheme.

Proposed Recommendation

That Australia abolish compulsory income quarantining in all communities.

³² OECD, ‘Country Note: Australia’, *Growing Unequal?: Income Distribution and Poverty in OECD Countries* (2008), 1, available at

<http://www.oecd.org/dataoecd/44/47/41525263.pdf>.

This means that 12 per cent of the population lives on less than half of the median average income.

³³ Ibid.

³⁴ Ibid.

Mental health care

Access to appropriate services

Suggested Question

What steps has Australia taken to ensure that persons with mental illness are able to access appropriate health services?

Background

Mental health services are significantly under-resourced in Australia and there are widespread problems with access to care, quality of care and adequate accommodation for people requiring mental health services.

In 2009, Australia was reviewed for its compliance with *ICESCR*, with the Committee noting its concern with “the insufficient support for persons with mental health problems, as well as the difficult access to mental health services, in particular for Aboriginal and Torres Strait Islander peoples, prisoners and asylum seekers in detention”. In this regard, the Committee recommended that Australia:

- allocate adequate resources for mental health services and other support measures for persons with mental health problems in line with the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care;
- implement the recommendations of the Australian Medical Association’s 2008 report on Aboriginal and Torres Strait Islander health;
- reduce the high rate of incarceration of people with mental diseases; and
- ensure that all prisoners receive an adequate and appropriate mental health treatment when needed.

Proposed Recommendation

That Australia: (1) allocate adequate resources for mental health services and other support measures for persons with mental illness in line with human rights principles and standards, including developing and setting appropriate benchmarks and indicators; and (2) implement the

specific recommendations contained in the Concluding Observations of CESCR relating to mental health services.

Recommendations of the UN Special Rapporteur on the right to health

Suggested Question

What steps has Australia taken to implement the recommendations made by the Special Rapporteur on the right to health following his country visit in 2009?

Background

In 2009, the UN Special Rapporteur on the right to the highest attainable standard of health undertook a Country Visit to Australia. During his visit, the Special Rapporteur focused on the standard of living and quality of health care and health services for Aboriginal and Torres Strait Islanders, the health of people in prison and health of immigration detainees.

In his report released in June 2010, the Special Rapporteur made a number of recommendations, including that Australia:

- develop a national health policy which includes a detailed plan for the full realisation of the right to health;
- increase engagement with community health providers by prisons, which would improve continuity of care and facilitate reintegration into the community;
- increase resource allocation for diagnosis, treatment and prevention of mental illnesses within prisons;
- assess and invest in the primary health care sector throughout the prison system;
- undertake research regarding Aboriginal and Torres Strait Islander incarceration issues as a matter of urgency;
- reconsider the policy of mandatory detention of irregular immigration arrivals;
- place detainees with a history of torture and trauma in community detention; and

- reconsider the appropriateness of detention facilities continuing to operate on Christmas Island, and assess provision of mental health services to this population as a matter of priority.

Proposed Recommendation

That Australia implement the recommendations of the Special Rapporteur on the right to health.

Prisoners' access to appropriate health care

Suggested Question

What steps is Australia currently undertaking to ensure that people in prison are able to access appropriate health services, including particularly mental health services?

Background

As identified above, following his visit to Australia in 2009, the UN Special Rapporteur on the right to the highest attainable standard of health made the following specific recommendations relating to health services in prisons:

- increase engagement with community health providers by prisons, which would improve continuity of care and facilitate reintegration into the community;
- increase resource allocation for diagnosis, treatment and prevention of mental illnesses within prisons;
- assess and invest in the primary health care sector throughout the prison system; and
- undertake research regarding Aboriginal and Torres Strait Islander incarceration issues as a matter of urgency.

Similar recommendations were also been made by the Committee on Economic, Social and Cultural Rights in 2009, as well as the Committee against Torture in its 2008 Concluding Observations, regarding the insufficient provision of mental health care in prisons and mentally ill inmates being subjected to extensive use of solitary confinement.

Proposed Recommendation

That Australia take further steps to provide appropriate health care, including particularly mental health care, to people in prison, including by implementing the recommendations of the Special Rapporteur on the right to health, the CESCR and CAT.

Universal Periodic Review of Australia – Joint NGO Coalition

Fact Sheet 14

Counter-terrorism

Compatibility with international human rights standards

Suggested Question

How does Australia ensure that its counter-terrorism measures remain necessary and proportionate to combat the threat faced by Australia, and consistent with Australia's international human rights obligations, such as those under ICCPR and the CERD?

Background

Since 2001, Australia has introduced more than 50 new counter-terrorism laws, often without assessing their potential impact on human rights.³⁵ As a result, some aspects of these laws have been found by UN human rights bodies³⁶ and independent domestic review bodies³⁷ to unduly infringe upon fundamental rights and freedoms, including the right to a fair trial, freedom from arbitrary detention, freedom from torture, freedom of association and the right to non-discrimination.

³⁵ A comprehensive list of the relevant legislation is available at <http://www.nationalsecurity.gov.au/agd/www/nationalsecurity.nsf>.

³⁶ See, Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia* (March 2009), Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, *Australia: Study on Human Rights Compliance while Countering Terrorism* (14 December 2006), *Concluding Observations of the Committee on the Elimination of Racial Discrimination: Australia* (27 August 2010).

³⁷ The Hon. John Clarke QC, Report of the Inquiry into the Case of Dr Mohamed Haneef, Volume One, November 2008; Report of the Parliamentary Joint Committee on Intelligence and Security, Review of Security and Counter-Terrorism Legislation (December 2006) Report by the Australian Law Reform Commission, *Fighting words: A Review of Sedition Laws in Australia* (July 2006) Report of the Security Legislation Review Committee (June 2006).

Despite some recent positive developments, including laws to establish an Independent National Security Legislation Monitor, and proposed amendments to sedition laws to ensure they do not infringe on the right to freedom of expression, a number of aspects of Australia's counter-terrorism laws continue to raise serious human rights concern. These include provisions which:

- contain broadly defined terrorist offences (Part 5.3 of the Criminal Code 1995). These offences: rely on an overly broad definition of 'terrorist act'; capture a wide range of conduct unconnected with any specific, planned terrorist act; and give police wide powers to determine who should be charged with or prosecuted for these offences. These provisions infringe the freedom from arbitrary arrest and detention in Article 9(a) ICCPR, and fail to comply with the criteria outlined by the UN High Commissioner for Human Rights for counter terrorism laws.
- allow the police to detain persons or restrict their movement even if they have not been charged with or convicted of any offence (Divisions 104 and 105 of the Criminal Code). The police can obtain control orders or preventative detention orders which allow for a person's liberty to be restricted without having to charge or prosecute a person for a terrorist offence. Once these orders have been made they are difficult to challenge or remove. These provisions infringe upon the freedom from arbitrary detention in Article 9 ICCPR, and freedom of movement in Article 10.
- authorise the Australian Security Intelligence Organisation (ASIO) to require a person to answer questions or to detain a person for up to seven days for the purposes of questioning (Part III Division 3 of the ASIO Act 1979). Under these powers, ASIO can question or detain anyone who is able to substantially assist in the investigation of a terrorism offence, even if they are not suspected of being involved in a terrorist offence. People

detained are required to keep certain information secret, and have limited opportunities to contact family or lawyers, or to challenge their detention. These provisions infringe Article 9 ICCPR, and the right to a fair trial in Article 14.

- prevent a person charged with a terrorist offence from being released on bail, unless 'exceptional circumstances' are shown to exist (s15AA of the Crimes Act 1914). These provisions, which reverse the usual presumption in favour of bail, infringe upon the right to be presumed innocent and the right not to be detained while awaiting trial, in Article 9 ICCPR.
- empower the Attorney-General, with Parliament's approval, to ban certain organizations and criminalise any interaction with that organisation (Division 102 of the Criminal Code). Under these provisions, an organisation can be declared a 'terrorist organisation' if, for example, it is involved in preparing or planning a terrorist act, or praises the doing of a terrorist act by another organisation. Once an organisation has been declared to be a 'terrorist organisation', serious criminal penalties apply to anyone who is a member of or connected with the organisation. These provisions infringe the freedom of association, in Article 22 ICCPR and freedom of expression, in Article 19.
- provide police with expanded powers to stop, question and search persons for the purposes of investigating and preventing terrorism, (ss3UA-3UK of the Crimes Act). Once an area has been declared a 'prescribed security zone' by the Attorney General, the police can use their stop, search, questioning and seizure powers on anyone in this zone, even if they are not suspected of committing or planning to commit a terrorist act. These provisions potentially interfere with the right to liberty and security in Article 9 ICCPR and the right to undertake lawful demonstrations, in Article 19.

Many of Australia's counter-terrorism measures impact particularly harshly on Australia's Muslim and Arab population, and have intensified experiences of fear, alienation and distrust of authority experienced by these communities since 11 September 2001. For example, often members of the Muslim and Arab community are the subject of the police's expansive investigative powers, and almost all organisations that have been listed as 'terrorist organisations' have self-identified as Islamic organisations. The UN CERD Committee has recommended that Australia ensure that its counter-terrorism measures do not discriminate in purpose or effect on grounds of race, colour, descent, or national or ethnic origin.

Proposed Recommendation

That Australia immediately review and amend its counter-terrorism laws and practices to ensure that they are consistent with Australia's international human rights obligations. This should include: (1) enacting a federal Human Rights Act to assess counter terrorism laws against human rights standards; (2) immediately appointing a National Security Legislation Monitor, to review and report on the operation, effectiveness and implications of Australia's counter-terrorism law, including their continued necessity and their compliance human rights; and (3) amending counter terrorism laws and practices to respond to past recommendations of UN treaty bodies and Special Rapporteurs, and to ensure full conformity with the ICCPR, CAT, and CERD.

Universal Periodic Review of Australia – Joint NGO Coalition

Fact Sheet 15

Police

Police oversight, regulation and accountability

Suggested Question

How do the interactions of Australia's police with the wider community conform with the international human rights to be free from torture, cruel, inhuman and degrading treatment or punishment, the entitlement to equality and non-discrimination, and minority rights?

Background

There is a lack of regulation and accountability regarding the use of force (including lethal force) by police and deaths in custody (in particular, Aboriginal deaths in custody) in many Australian jurisdictions. There are inadequate means for independently investigating police conduct and a lack of access to effective remedies where police misconduct is proven to have occurred. There is evidence of targeting and harassment by police of Aboriginal and Torres Strait Islander peoples³⁸ and of newly arrived migrants (particularly those from Africa).

Proposed Recommendation

That Australia: (1) establish independent, effective police oversight mechanisms; (2) legislate to regulate the use of force in a human rights-compliant way; (3) mandate compulsory human rights and anti-racism training for police across all Australian jurisdictions; and (4) implement a system whereby any death that occurs in police custody (and especially those concerning the death of an Aboriginal person) be investigated by an independent and impartial body.

³⁸ See, for instance, Ethical Standards Department, Victoria Police and Indigenous Issues Unit, Department of Justice, *Koorie Complaints Project - 2006-2008 - Final Report* (2008), pages 7, 18 and 19; Vic Health, *Building on Our Strengths: A Framework to Reduce Race-based Discrimination and Support Diversity in Victoria* (December 2009), page 31.

Expansion of coercive powers

Suggested Question

What safeguards are in place in Australia to ensure that individuals are not deprived of their human rights to liberty and security of person during interactions with police?

Background

Legislation has been introduced and implemented across Australia as part of a commitment towards “tackling the growing incidences of drunkenness, disorderly behaviour and violence”³⁹. Such legislation significantly extends the coercive powers available to police to search and apprehend individuals including, in some instances, without any need for suspicion on reasonable grounds regarding the commission of an offence. The legislation has had a disproportionate affect and impact on young, Aboriginal and Torres Strait Islander peoples, homeless and mentally ill individuals.

Proposed Recommendation

That Australia: (1) reinstate the need for suspicion on reasonable grounds that an offence has been committed as a standard into all summary offences and control of weapons legislation across Australia; and (2) invest more money and resources towards human rights-based education and training which advocates for a community-oriented solution to addressing the root causes of criminal behaviour such as disorderly behaviour and violence.

³⁹ See, for example, the *Summary Offences and Control of Weapons Acts Amendments Bill 2009* (Vic).

Prisoners and prison conditions

Access to appropriate health services

Suggested Question

What steps is Australia currently undertaking to ensure that people in prison are able to access appropriate health services, including particularly mental health services?

Background

The number of forensic patients and mentally ill inmates housed in Australian prisons has steadily increased, without a proportionate increase in mental health resources available. Around one in every five prisoners in Australia suffer from serious mental illness.⁴⁰ There is substantial evidence from across Australia that access to adequate mental health care in prisons is manifestly inadequate, that the mentally ill in prison are often ‘managed’ by segregation, and that such confinement – often for very long periods – can seriously exacerbate mental illness and cause significant psychological harm.⁴¹

Following his visit to Australia in 2009, the UN Special Rapporteur on the right to the highest attainable standard of health, Mr Anand Grover, made the following specific recommendations relating to health services in prisons:

- increase engagement with community health providers by prisons, which would improve continuity of care and facilitate reintegration into the community;
- increase resource allocation for diagnosis, treatment and prevention of mental illnesses within prisons;
- assess and invest in the primary health care sector throughout the prison system; and

- undertake research regarding Aboriginal and Torres Strait Islander incarceration issues as a matter of urgency.

Similar recommendations were also made by the Committee on Economic, Social and Cultural Rights in 2009, as well as the Committee against Torture in its 2008 Concluding Observations, regarding the insufficient provision of mental health care in prisons and mentally ill inmates being subjected to extensive use of solitary confinement.

Proposed Recommendation

That Australia (1) take further steps to provide appropriate health care, including particularly mental health care, to people in prison, including by implementing the recommendations of the Special Rapporteur on the right to health, the CESCR and CAT; and (2) provide adequate resources for mental health diagnosis and treatment within prisons, in particular for the provision of services to specific groups of prison populations.

Conditions in prisons

Suggested Question

What steps has Australia been undertaking to implement the Committee against Torture’s 2008 recommendations relating to conditions of prison and concerns about the use of “supermaximum” prisons?

Background

Conditions in prison, including transport between prisons and in “supermaximum” prisons, raises serious human rights concerns in Australia. Australian “supermaximum” prisons are currently used to house a range of inmates, including those on remand, terrorist suspects and convicted prisoners. Some of these inmates suffer from mental illness. In 2008, the Committee against Torture expressed concern about these prisons and asked the Australian Government to review

⁴⁰ J P R Oglloff et al, *The Identification of Mental Disorders in the Criminal Justice System* (Australian Institute of Criminology, March 2007).

⁴¹ See, eg, Forensicare (Victorian Institute of Forensic Mental Health), *Submission to Senate Select Committee on Mental Health* (May 2005) 4, 5, 19 & 20. See also: NSWCCCL Shadow Report, [149]-[150].

conditions in these facilities and report back to the Committee on its progress.⁴²

Overcrowding is also a real problem in many Australian prisons. The Committee against Torture also recommended in 2008 that Australia take urgent action to reduce overcrowding. Additionally, reports have emerged from the Northern Territory about the increase in intellectually disabled and mentally ill people who remain incarcerated due to lack of appropriate care facilities.

Proposed Recommendation

That Australia implement the recommendations made by the Committee against Torture in 2008.

Imprisonment rates of Aboriginal and Torres Strait Islander peoples

Suggested Question

What strategies does Australia have in place to reduce the imprisonment rates of Aboriginal and Torres Strait Islander peoples?

Background

Aboriginal and Torres Strait Islander peoples in Australia are among the most incarcerated people in the world. The national rate of imprisonment of Aboriginal and Torres Strait Islander peoples continues to increase. Incarceration rates of Aboriginal and Torres Strait Islander peoples are at least 11 times higher than the rate for non-Indigenous Australians. Aboriginal and Torres Strait Islander children between 10 and 14 years of age are 30 times more likely to be incarcerated than their non-Indigenous peers. Aboriginal and Torres Strait Islander women are almost 20 times more likely to be incarcerated than non-ATSI women.⁴³ In 2006, the UN Human Rights Committee found that the treatment of an Aboriginal juvenile in a NSW prison amounted to

inhumane treatment. The juvenile, Mr Brough, was placed in isolation in an *adult* prison, exposed to artificial light for long periods and had his blanket and some of his clothes removed.⁴⁴

Proposed Recommendation

That Australia (1) place greater emphasis on access to education and rehabilitative services in prison and on post-release programs and support for Aboriginal and Torres Strait Islander peoples, including in the areas of health care, housing and education; and (2) conduct an independent inquiry on the interaction of Aboriginal and Torres Strait Islander peoples with the criminal justice system, with a view to implementing strategies to reduce imprisonment rates.

⁴² Committee Against Torture, *Concluding Observations: Australia* (15 May 2008) UN Doc. CAT/C/AUS/CO1, [24], [37].

⁴³ See generally, Australian Bureau of Statistics, *Prisoners in Australia 2006* (2006) which reveals that prison numbers across Australia increased by 42% between 1996 and 2006 and that Aboriginal people constitute 24% of the prison population compared with approximately 2% of the general population.

⁴⁴ *Brough v Australia*, UN Doc CCPR/C/86/D/1184/2003 (2006).

Extra-territorial obligations

International assistance

Suggested Question

How much of its gross national income (GNI) has Australia committed towards official development assistance (ODA)?

Background

Notwithstanding the United Nations target of 0.7% for developed countries, Australia contributes only 0.29% of its GNI to ODA in 2009/2010.⁴⁵ Australia recently committed to increasing its assistance to 0.5% of GNI by 2015-2016.⁴⁶ However, this remains well short of the Millennium Development Goal target of 0.7% target.

Proposed Recommendation

That Australia (1) increase its official development assistance to 0.7% of its GDP to ODA as reaffirmed at the Follow-Up International Conference on Financing for Development to Review the Implementation of the Monterrey Consensus held in Doha on 29 November - 3 December 2008; (2) collaborate with interested groups, communities and experts in the fields of global poverty and climate change so as to develop and lodge with the UN a detailed and transparent action plan and timetable for achieving an increase in ODA to 0.7% of GNI.; and (3) take a human rights-based approach towards foreign policy in the areas of trade, investment, business, labour, migration, defence, military cooperation, security and the environment.

⁴⁵ Committee on Economic, Social and Cultural Rights, Concluding Observations of the Committee on Economic, Social and Cultural Rights: UN Doc E/C.12.AUS/CO/4.

⁴⁶ Australian Government Budget 2010-2011, Australia's Development Assistance Program, http://www.budget.gov.au/2010-11/content/ministerial_statements/ausaid/html/ms_ausa-id-03.htm, as at 20 October 2010.

Business

Suggested Question

To what extent are the activities of Australian companies regulated and monitored in order to ensure compliance with international human rights laws and standards?

Background

There are a number of Australian companies whose actions and/or activities have had a severe impact on the human rights of individuals across the world.⁴⁷ Nevertheless, there remains no comprehensive legal framework which imposes human rights obligations on Australian corporations when operating overseas, particularly in areas where there is relaxed or no regulation.

Proposed Recommendation

That Australia: (1) enact legislation with both domestic and extra-territorial effect and application to ensure that Australian companies respect human rights within the Special Representative's framework⁴⁸; and (2) develop a range of 'hard' and 'soft' law measures to ensure that corporations respect human rights, including through public procurement and investment, human rights impact assessment processes, directors' duties, the establishment and strengthening of corporate grievance mechanisms, and guidelines and capacity building for businesses on human rights.

⁴⁷ Australian Human Rights Commission, *The Australian Mining and Resource Sector and Human Rights*, http://www.hreoc.gov.au/pdf/human_rights/corporate_social_responsibility/factsheet3.pdf.

⁴⁸ Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc A/HRC/8/5, 7 April 2008.